Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

NO. 75-77

John Holly, Jr.,

Petitioner

v.

Ohio Edison Company,

Respondent

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Ohio

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IN THE
SUPREME COURT OF THE UNITED STATES
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NO.

John Holly, Jr.,

Petitioner

v.

Ohio Edison Company,

Respondent

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Ohio

Petitioner John Holly, Jr. prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered in this case on April 17, 1975, denying Petitioner a hearing on his appeal and to review of the judgment of the Court of Appeals of Ottawa County, Ohio, the highest state court which heard this case on its merits, and to order either of those Courts to sustain the Judgment of the trial court.

OPINIONS BELOW

The order of the Common Pleas Court of Ottawa County, Ohio, finding in favor of this Petitioner, and the decision of the Court of Appeals of the Sixth Appellate District of Ohio reversing that order, are printed in the Appendix of this Memorandum.

The Supreme Court of the State of Ohio did not rule on the merits of the case, but dismissed Petitioner's Appeal to that Court on April 17, 1975.

STATEMENT OF JURISDICTION

The Supreme Court of Ohio entered judgment dismissing Petitioner's Appeal and overruling his Motion for an Order Directing the Court of Appeals to Certify its Record on April 17, 1975.

The Supreme Court of Ohio would not hear this case claiming there was no constitutional question involved.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3) and this Court's Rule 22 (1) inasmuch as the Ohio Courts have denied Petitioner's rights, privileges and immunities guaranteed him under the Constitution of the United States.

The decision of the trial, Appellate and highest courts of Ohio are unreported.

QUESTIONS PRESENTED

1. Do the Constitutional safeguards under the Fifth and Fourteenth Amendments protecting private property from appropriation apply only to the condemnation proceedings filed in a Court of Law, or do these safeguards protect a property owner in his home?

2. Where a corporation having the power of eminent domain comes to Petitioner's home and obtains his signature to an option for right of way for a high voltage transmission line and the consideration paid is for the area taken only, does the option deny just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution by denying damage to the remaining land?

3. If a property owner does not release his right to damage to the remaining realty, is he entitled to a jury trial to determine the damage, if any, pursuant to the requirement of "just" compensation under the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and "full" compensation under Article XIII, Section 5, of the Ohio Constitution?

4. Can a property owner be held to have waived his right to compensation for damage to remaining land when no such waiver is distinctly made, when the property owner

does not have full knowledge of the rights which he waives, and when the fact that the property owner knew his rights and intended to waive them did not plainly appear?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisionsinvolved are that portion of the Fifth Amendment to the Constitution of the United States which reads in part:

> ... nor shall private property be taken for public use without just compensation;

And that portion of the Fourteenth Amendment to the United States Constitution which reads as follows:

> ... nor shall any State deprive any person of life, liberty or property without due process of law.

The Constitutional provision invoked herein in the Constitution of the State of Ohio is that part of Article I, Section 19, which reads:

> ... and in all other cases where private property shall b be taken for public use, a compensation therefor shall first be made in money, or first secured by deposit of money; and such compensation shall be addressed by a jury, without deductions for benefits

to any property of the owners;

And Article XIII, Section 5, of the Constitution of the State of Ohio, which reads:

> **No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation: which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.**

Those Statutes of the State of Ohio giving the corporation herein the right to appropriate property are Sections 1723.01 and 1723.02, contained in the Appendix hereof.

Section 163.14 of the Ohio Revised Code provides for a verdict by a jury which shall:

> **. . . assess the compensation for the property appropriated and damages, if any, to the residue, to be paid to the owners.**

Complete text of this statute is included in the Appendix in Exhibit F.

STATEMENT OF THE CASE

On April 4, 1972, Respondent Ohio Edison Company, an Ohio corporation having the power of eminent domain, obtained the signature of Petitioner John Holly, Jr. to two options to purchase easements and rights of way for the erection, inspection, operation, replacement, relocation, repair and patrol of a high voltage electric transmission line through his real estate. Copies of said options are shown in the Appendix as Exhibits G and H. Said options contained the following language:

> "The exact location of said right of way is to be designated by Grantee after its final surveys are made and in any event before the construction of said lines shall be commenced."

John Holly was given $20.00 for the signing of these options. Nowhere in these options is there mention or release of damages to remaining land or reduction in value of remaining land as a result of this type of easement.

Subsequently, John Holly was approached by Ohio Edison and requested to sign an easement instrument, a copy of which appears in the Appendix as Exhibit I. The easement instrument contained different descriptions

than those contained in the options as follows: the options contained descriptions in rods whereas the easement contained descriptions in feet and one description described an area forty feet wider, which was double the width of the easement. These variances in description were acknowledged by the Court of Appeals in its decision and journal entry filed February 4, 1975, copied in Exhibit B in the Appendix.

A comparison between the option description and the easement description, line by line, showing the difference in feet is enclosed in the Appendix as Exhibit J.

When approached to sign the easement instrument, John Holly consulted his attorney and was advised not to sign the easement document because of the variance in description and because no provision was made for damage to residue. Ohio Edison then deposited in John Holly's bank the sum of $3500.00 which was the payment recited in the option and demanded that he execute the tendered easement. He again refused and Ohio Edison filed a suit in specific performance. Holly defended, contending his constitutional rights were violated and asked for the impaneling of a jury to assess damage, if any, to residue.

The Federal questions sought to be reviewed were first raised by Petitioner in

the trial court in his Amended Answer as follows:

> "Defendant alleges that Plaintiff has indicated that it wants an easement for a high voltage transmission line over and through Defendant's real estate, but that it does not want to pay damages to residue, if any, required by law, contrary to Article XIII, Section 5, and Article I, Section 19, of the Constitution of the State of Ohio and contrary to the due process requirement of the Fourteenth Amendment and the Seventh and Ninth Amendments of the Constitution of the United States."

The trial court ruled in favor of Holly but did not mention any federal question in its decision. The trial court found that Ohio Edison did not request Holly to convey the description in the option, but another description which contained variances both as to length and width. The trial court further found that Ohio Edison presented no evidence showing that it requested Holly to execute an easement containing identical descriptions with those in the option. The Court said it could only apply a description and not supply one. It denied Ohio Edison's request for

specific performance of the options by judgment dated July 30, 1974, a copy of which is found in the Appendix as Exhibit A.

Ohio Edison appealed this decisision to the Court of Appeals of Ottawa County, Ohio, without raising any constitutional questions.

The judgment of the trial court was reversed, the Court of Appeals holding that a variance in realty description is not sufficient basis for refusal to execute the easement document. This decision was filed February 4, 1975, and a copy of it is included in the Appendix as Exhibit B. Holly did not file any assignments of error in the Court of Appeals since he was the Appellee.

Subsequently, Holly filed a motion with the Court of Appeals to certify the record in this case to the Ohio Supreme Court because of the constitutional questions involved and conflict with judgments of other Courts of Appeals. These other decisions held in effect that an option description had to be sufficiently detailed to enable description of the property. Holly contended that the unilateral right of Ohio Edison to change the description and the fact that it did change the description precluded any meeting of the minds on a description of the real estate being taken. This motion was overruled by the Court of Appeals on February 18, 1975, and a copy of that decision is included in the Appendix as Exhibit C.

Holly filed a Motion to Certify to the Supreme Court of the State of Ohio. Assignments of Error are not required in a Motion to Certify. Instead, the Ohio Supreme Court requires propositions of law. The propositions of law which were cited by Holly rely upon the Fifth and Fourteenth Amendments to the United States Constitution. Propositions of Law numbers one, two, three, five and six are quoted in the Appendix as Exhibit N. This appeal was denied. Copies of the orders of the State Supreme Court dismissing the appeal are found in the Appendix as Exhibits D and E.

HOW FEDERAL QUESTIONS WERE PREVIOUSLY PRESENTED

The Federal question of whether Petitioner's Constitutional rights were violated by the corporation was originally presented in the trial court wherein Petitioner raised the issue in his Answer. The Petitioner cited said Constitutional provisions throughout the trial court proceedings and again in the Court of Appeals.

In his attempted appeal to the Supreme Court of Ohio, Petitioner again raised the issue of Constitutional protection under Article XII, Section 5, of the Constitution of the State of Ohio and the Fifth Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution.

REASONS FOR GRANTING THE WRIT

I. IT IS VITAL TO THE CONSTITUTIONAL RIGHTS OF PROPERTY OWNERS THAT THIS COURT ESTABLISH STANDARD PROCEDURES TO BE FOLLOWED IN LAND ACQUISITION BY CORPORATIONS.

There is a unique problem when a body having the power of eminent domain approaches a property owner for the purpose of taking his land for public use. Rules for "arms length" transactions and the assumption of "willing buyer" and "willing seller" do not apply. There can be no "willing seller" when the threat of condemnation proceedings is ever present in the negotiations. The possibility of a court action and the cost of any such action is, by itself, enough to intimidate many a property owner into settling with the appropriating agency or corporation. In addition, most property owners are inexperienced with easements -- especially high voltage electric easements as in this case -- and do not realize the effects such a right of way will have on the remaining portion of their property until it is too late.

Petitioner contends that it is just as essential to "assure consistent treatment for owners" of property appropriated by corporations in the various states as it is to the owners of property appropriated by states

for highways, public housing, etc. Yet no such law exists for corporations and a corporation, with private stockholders, is not required to appraise the property; nor to offer the property owner "full" value for the land; nor to list the amount paid for damage to remaining land separately from that paid for the land taken. A corporation having private ownership of stock is not even required to inform the landowner that there will be a reduction in the market value of his remaining land because of the easement -- or that the property owner has any right to be compensated therefor. Instead, each separate corporation is allowed to establish its own policy for negotiating with property owners, often resulting in inconsistent, unfair and inadequate compensation being paid to many property owners who settle out of Court. This whole process totally disregards the Constitutional rights to "just" compensation.

Yet, after the settlement, the property owner has very little, if any, legal redress against the corporation. The corporation will claim the property owner has waived all his rights to damage to remaining property, etc. -- even though the property owner did not intentionally and knowingly waive such rights.

In the case of Gladys and Walter B. Farmer v. The Toledo Edison Company, Ottawa County, Ohio, Common Pleas Court Case No. 17402 (1972) (unreported), the trial

judge ventured into a new area of law in the following decision:

> It seems to this Court, while he can find no decisions to substantiate what he says, that a utility company should be compelled to have an appraisement made and a knowledge of the value and effect on the easement when they send people out to negotiate and that the Toledo Edison pay a price, at least a fair price, for the reasons that they are not standing on an equal basis with the seller, and that they can not deal on a willing buyer and seller basis because the landowner is not a willing seller. (Complete order in Appendix hereof as Exhibit K.)

The Court of Appeals for the Sixth Appellate District of Ohio reversed this decision because they could find no precedent for it. Appeals were denied in both the Supreme Court of Ohio and this Supreme Court.

If there is to be any distinction made between the requirements for the appropriation of property by the state and by a utility corporation that has private ownership of stock, Petitioner believes that it is the utility rather than the state which needs the more stringent rules and guidelines. The state has

no dollar incentive to get the land from the property owner as cheaply as possible, as does the private corporation. The difference between "fair compensation" and an "unfair" and low price" made by the state will be paid by all from tax revenues. But the corporation will be motivated by profit considerations to save as much as possible of its private stockholders' money and get as low a price as possible.

Petitioner requests that this Court protect the rights of a property owner as guaranteed him by the United States and Ohio Constitutions by setting out rules which must be followed by corporations in negotiating for property which could be taken through an appropriation proceeding.

II. UNDER THE PRETENSE OF FOLLOWING THE EXISTING LAW, PRIVATE PROPERTY IS BEING TAKEN FOR PUBLIC USE, BUT JUST COMPENSATION HAS NOT BEEN PAID.

The facts of this case present this Court with the opportunity to review the actions of a public utility company in its taking of privately owned land for public use. In this case submitted for the Court's review, Petitioner seeks to establish his rights as guaranteed him by the Constitution of the United States and seeks an order declaring the option granted Ohio Edison void.

Our Constitution and laws guarantee property owners that when our Government or others authorized by our Government find it essential in the public interest to take private property, the owners will be fully compensated for it.

"Full" compensation as required by Article XIII, Section 5, of the Ohio Constitution and "just" compensation as required by the Fifth Amendment and the due process clause of the Fourteenth Amendment of the United States Constitution have as their constituent components (1) payment for land taken and (2) payment for reduction in value of remaining land. Section 163.14, O.R.C., provides that a jury shall assess damages which shall include:

> . . . the compensation for the property appropriated and damages, if any, to be paid to the owners.

This concept of just compensation is substantiated by the following citations:

As stated in In Re Appropriation for Highway Purposes, 6 Ohio App. 2d 6 (Allen Co., 1966):

> In determining the market value of property to be taken, each case must be considered

> in the light of its own facts, and every element that can fairly enter into the question of value and which an ordinarily prudent businessman would consider before forming judgment in making a purchase, should be considered.

Also see Sayre v. United States, 18 Ohio Misc. 23, 35 (United States District Court, Northern District, Eastern Division, 1967):

> Whereby private property is taken for the state or under its direction for public use, without compensation made or secured to the owner, is upon principle and authority wanting in the due process of law required by the Fourteenth Amendment of the United States. . ." Malloy v. Hogan (1964) 378 U.S. 1, at 4 84 S. Ct. 1489, at 1491, 12 L. Ed. 2d 653, construed Chicago B. & O. R.R. v. Chicago (1897), 166 U.S. 226, at 241, 17 S. Ct. 581, at 586, 41 L. Ed. 979, to hold that: "the Due Process Clause requires the states to pay just compensation for private property taken for public use." Thus, the Supreme Court determines that the due process clause of the Fourteenth

> Amendment is the equivalent of the Fifth Amendment provision "nor shall private property be taken for public use, without just compensation."

That the presence of a high voltage transmission line adversely affects the market value of the remaining land and, therefore, damages the residue and is reason for compensation for such damages has been established by Van Horn v. Iowa Public Service Co., 182 N.W. 2d 365 (1970):

> Any factor that will impress a willing buyer in purchasing property, if otherwise competent, is both material and relevant in establishing deiminished value of remainder of property following taking of portion of tract.
>
> Every element which can fairly enter into question of value and which an ordinary prudent man would consider before forming judgment in making a purchase should be considered, not as an independent element of damages, but as a factor in determining the market

value of remaining property
after taking a portion of
tract.

Further supporting cases are Georgia Power v. Sinclair, 176 S.E. 2d 639 (1970); Gulf States Utilities Co. v. Robin, 237 So. 2d 422 (1970); Central Louisiana Electric Co. v. Fontenot, 159 S 2d 738 (1964).

Further, Petitioner requests this Court to find that no private property owner can waive his rights to "just" and "full" compensation -- both for area taken and residue -- unless such waiver is distinctly made, with full knowledge of the right which he intends to waive; and the fact that he knows his rights and intends to waive them, must plainly appear. See 56 Am. Jur. 115.

In this case, the corporation approached Petitioner and succeeded in securing his signature to options for easements across his land. They did this without any consideration of the damages inflicted on the remaining portion of the property. They did not tell the Petitioner that he had a right to receive compensation for any such damages or that he would be waiving that right by signing said option. It cannot be presumed that any property owner knows either the effects of the easement to his property or his rights for "full" compensation both as to the "take" and "residue".

The Record shows, that instead of intentionally waiving his rights to compensation for damages, the property owner was left with the impression that the corporation would negotiate with him as to the amount of damages when and if the corporation decided to exercise the option for the easement. (See copy of Mr. Holly's testimony, Exhibit L of this Appendix). This evidence was not contradicted by the corporation.

Petitioner contends that whenever a corporation possessing the power of eminent domain approaches a property owner with the intent of purchasing his property that the Constitutional safeguards against the unlawful taking of private property apply; that such Constitutional safeguards do in fact apply from the first negotiations between the public authority and the private owner and are not to be applied merely in a final Court action of appropriation. In such a case, Petitioner urges that this Court require the corporation, when approaching the property owner for the purpose of securing his land, or part of his land, to consider damage to remaining land while bargaining with the property owner.

In addition to violating Petitioner's Constitutional rights by ignoring damages to residue of his land, the option gives the corporation the unilateral right to change and even to enlarge the easement area without paying for the additional land taken. Such a

provision is clearly unconstitutional.

Petitioner asks, that in the event this Court decides he must convey the requested larger easement to the corporation, it also find that he has not waived his right to damages to the remaining land, since there was no discussion of and no release of these rights. The requirements of "just" compensation can be met only if Petitioner is granted a trial so that a jury can assess the damages, if any, to the remainder of his property.

III. IT IS NECESSARY FOR THIS COURT TO SET GUIDELINES FOR THE UTILITY COMPANIES NOW AS MORE AND MORE ELECTRIC PLANTS ARE BEING PLANNED AND BUILT TO MEET THE COUNTRY'S GROWING NEED FOR ENERGY.

At least seven nuclear reactors are planned for Northern Ohio. Three reactors are being built along Lake Erie ten miles west of Port Clinton, Ohio, and two are being built ten miles east of Port Clinton. As the push for more energy continues, more and more electric power plants are being planned throughout the United States.

As a result of this construction, rights of way are being appropriated for transmission lines by many utility companies. Each company has a different procedure for acquiring

a right of way. The utility companies have not had any organized program for approaching property owners and as a result there have been misunderstandings with property owners about values, particularly in the area of damages to residue.

Copies of newspaper articles appearing in local papers are shown in the Appendix in an effort to point out to this Court the need for law in the area of easement acquisition.

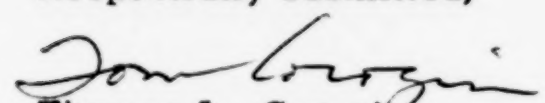
Petitioner requests this Court to set forth guidelines now, to be used in the various state courts in determining the legality of utility corporations' right of way easement settlements.

CONCLUSION

The Appellate Courts of Ohio are not following the Constitutional requirements for acquisition of right of way. We are now in a large scale nuclear power plant expansion program and ground rules should be established to prevent any utility company from taking advantage of property owners.

For the foregoing reasons, it is urged that this writ be granted.

Respectfully submitted,



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APPENDIX

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS OF OTTAWA COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF OTTAWA COUNTY, OHIO

Ohio Edison Company,
Plaintiff

Case No. 18085

v.

Date: 7/30/74

John Holly, Jr.,
Defendant

JUDGMENT

This matter comes on to be heard on the trial on the merits and on Plaintiff's motion filed December 17, 1973, for an award of expenses and attorney fees in connection with said motion to compel discovery.

After Plaintiff's motion was filed Defendant, on January 7, 1974, filed a motion for a protective order under Civ. R. 26-B. Both Plaintiff's motion to compel discovery and Defendant's motion for a protective order were heard at the same time on January 30, 1974. At said hearing said Defendant testified further on cross examination as a supplement to his depostion of September 14, 1973, and filed in this Court December 27, 1973. The Court's docket entry of January 30, 1974,

Exhibit A

says. "Motions of Plaintiff and Defendant heard and decided - - see judgment entry." However, no judgment entry appears of record concerning said motions. Nevertheless, because the Court remembers having continued that part of Plaintiff's motion concerning expenses and attorney fees, the Court disposes of these matters as follows:

The matters of which Plaintiff complains in its motion are not instances of failure to obey a court order under Civ. R. 37 (B), but properly come under the last paragraph of Civ. R. 37 (A) (4), Civ. R. 30 (E), and the last sentence of Civ. R. 30 (D). As authority for its decision herein the Court cites Ward v. Hester, et al. (1973) 36 O.S. 2d 38; Sexton v. Sugar Creek Packing Co. (1973) 38 O. App.2d 32; and, State Auto Mutual v. Chrysler Corp. (1973) 36 O.S. 2d 151.

That part of Plaintiff's motion dealing with Defendant's failure to sign his deposition [illegible]wered in the second paragraph of Defendant's memorandum filed December 24, 1973. In any event said matter is not a subject for action under the sanctions of Civ. R. 37; Civ. R. 30 (E) outlines the effects of Defendant's not signing.

Concerning the failure of Defendant to answer those questions propounded to him by Plaintiff at Pages 9 through 17 of the deposition of September 14, 1973, the Court finds there

was no willfulness or bad faith on Defendant's part and that Defendant immediately answered questions in open court after objections were resolved; that Defendant's motion to limit questions demonstrates the good faith of the objections contained in said Defendant's deposition and are illustrated further by objections made by Defendant in the deposition of James E. Lannen taken February 6, 1974, and filed in this court on February 28, 1974; that the Lannen deposition resulted not of Defendant's refusal to answer questions at the original deposition of Defendant on September 14, 1973, Lannen's deposition resulting because Defendant's answers in court on January 30, 1974, did not provide Plaintiff with necessary information.

This Court further finds that as to Plaintiff's motion of December 17, 1973, said motion being to compel the discovery in question, that this Court granted said motion in part and denied said motion in part. Therefore, as to any possible sanctions, Plaintiff's request for expenses and attorney fees comes under the provisions of the last paragraph of Civ. R. 37 (A) (4) and the latter part of the first paragraph of Civ. R. 37 (A) (4) and this Court finds that the opposition to Plaintiff's motion was substantially justified and that the circumstances makes an award of expenses unjust. Therefore, this Court hereby denies Plaintiff's motion for expenses and attorney fees.

It should be further noted that the last sentence of Civ. R. 30 (D) allows an award under Civ. R. 37, of expenses incurred in relation to a motion to limit examination of a deponent or party, such as was the case here and which the Court granted. The Court notes that Defendant made no request for expenses or attorney fees and accordingly the same is not granted.

This matter also came on to be heard upon the motion of Defendant for a directed verdict or judgment on the evidence at the end of Plaintiff's case.

In interpreting the evidence strongest in favor of Plaintiff, the Court makes the first finding of fact: that the evidence here establishes that Plaintiff did not request of Defendant a conveyance of the description, whatever it may be called, as it was alleged in Plaintiff's complaint; namely, Exhibits A and B, now today entitled 1 and 2; that Plaintiff's demand of Defendant was with the description, or whatever it may be called, as in Exhibits 8 and 9. The Court finds that there are variances as to both length and width in the figures contained therein. Specifically, the Court makes another finding: that there was no evidence shown that Plaintiff requested of Defendant a transfer, as per Exhibits 1 and 2.

Now, these being specific findings of

fact, and ruling upon Defendant's motion, the Court finds, first, there having been no request, the issue as to Exhibits 1 and 2, if they can be -- whether or not they can be specifically enforced is not before the Court, or, if it was, it has been abandoned by the evidence. But the Court will go one step further. The Court would find that 1 and 2 by their own language and using the term "location" -- the Court is well aware of one of these decisions which it had before it today, speaking in terms that the Court cannot supply description, it may only apply a description. Cannot supply but it can apply. One of the things it can apply is location. Then you go to 1 and 2, you find the word "location" used in both before the typed description and after the typed description. However, in 1 and 2 the first location -- word "location" is and does follow the word "described" in part of the legal description. Therefore, the meaning of the word "location" cannot be assumed to be the same in 1 and 2 as the judge used it in the case -- the exact case I forget which one it was, but one of those that was cited today and which the Court read.

The Court must interpret the word "location" in Exhibits 1 and 2 as referring to legal description, not a spot on the ground such as was used by the judge in the Supreme Court decision. Therefore, in 1 and 2 the Court finds the description being indefinite and contemplated, in other words, supplying

a description, a future description yet to be made, and since 1 and 2 in a later paragraph, after the typed one, do not preclude an interpretation requiring the necessity of Defendant's consent to a new description. It is the paragraph immediately following the description, typed description in 1 and 2. Since that language does not preclude the necessity of Defendant, such a future description may include necessity of the grantor agreeing to the same.

Now, --but all of these latter statements were "but if", "but if" being if Plaintiff has not abandoned 1 and 2 as a claim and if even though they introduce no evidence concerning the request, that the law should be that they don't have to, that a lawsuit in and of itself is sufficient request. All of the courts' rulings follow thereafter.

The evidence today was really concerning your request as to 8 and 9, and in that regard the Court finds sufficient record that it is not in accordance with 1 and 2; the description is not exact in the matters already mentioned, nor as to ingress, egress.

Concerning Plaintiff's oral motion that the Court retain jurisdiction herein to resolve the question involving the $3500.00 put by Plaintiff into Defendant's bank account and order Defendant to return the same plus interest, Court hereby grants unto Plaintiff

2 weeks to file a legal brief in support of this Court's jurisdiction and authority to so order in this case; Defendant granted 2 weeks thereafter to file an answer brief; Plaintiff granted 1 week thereafter to file a reply brief, after which said motion will be decided by the Court without oral argument unless for good cause an oral hearing is granted.

It is therefore ordered, adjudged and decreed that Defendant be and hereby is granted judgment against Plaintiff and that Plaintiff's demand for specific performance be and hereby is denied.

It is further ordered, adjudged and decreed that Plaintiff is entitled to recover the $3500.00 deposited in Defendant's bank account, plus any interest received by Defendant less any taxes paid thereon by Defendant.

It is further ordered that Defendant's request for expenses and attorney's fees be in the same is hereby denied.

Exceptions to each party; costs to Plaintiff.

JUDGE'S SIGNATURE

JUDGMENT ENTRY OF THE COURT OF APPEALS OF THE SIXTH APPELLATE DISTRICT OF OHIO

IN THE COURT OF APPEALS OF OTTAWA COUNTY

Ohio Edison Company,

APPELLANT

vs.

John Holly, Jr.,

APPELLEE

Court of Appeals No. 463

Trial Court No. 18085

DECISION & JOURNAL ENTRY

DATE: January 24, 1975

The record reveals that plaintiff-appellant obtained two option agreements, identified as Plaintiff's Exhibits 1 and 2, executed by defendant-appellee by which defendant-appellee gave and granted to plaintiff a right and option to purchase before March 31, 1973, an easement and right-of-way for electric transmission lines traversing specifically described parcels of real estate owned by defendant. On or about March 22, 1973, and before the expiration of the option period, plaintiff exercised its two options by tendering to defendant the entire purchase price of $3,500.00 specified in the two option agreements, and deposited such sum to the account of defendant in the American Bank, Port Clinton, as specified in

Exhibit B

the option agreement. Simultaneously, and before March 31, 1973, plaintiff tendered to defendant two easement documents identified as Plaintiff's Exhibits 8 and 9, which contained real estate descriptions varying from the realty descriptions in the two option documents. One easement document described realty which in one area was approximately 40 feet wider than the option description. The easement documents contained realty descriptions containing only 2.6 acres and the option agreements described an area of 3.5 acres. Before March 31, 1973, defendant refused to execute the two easement documents, Plaintiff's Exhibits 8 and 9. The option agreements provided, inter alia:

> "*** all of the provisions contained in this option shall, *** be incorporated into a final instrument of conveyance, ***provided grantee pays or tenders to grantor *** in full satisfaction of rights obtained, the sum of ***. *** and such tender, payment or deposit shall constitute a full compliance of grantee's obligations hereunder, and grantor shall forthwith execute and deliver a final instrument of conveyance *** to grantee ***."

Defendant never fulfilled the responsibility imposed upon him by such provision to prepare, execute or deliver to plaintiff easement documents containing the same description as contained in the option agreements. Thereafter, after commencement of

this legal action, plaintiff prepared and tendered to defendant and filed in the record in this action on April 15, 1974, two easement documents for defendant's signature containing the exact real estate description as contained in the two option agreements, Plaintiff's Exhibits 1 and 2, but defendant has failed and refused to execute such agreements. The option agreements were binding upon defendant, the terms and real estate description therein definite and certain, and plaintiff had exercised its rights to purchase under the options and had fully performed its obligations under such options and plaintiff at no time abandoned its rights under such option agreements. The variance in the realty description of the two easement documents identified as Plaintiff's Exhibits 8 and 9 and the two option agreements, Exhibits 1 and 2, is not sufficient basis for defendant to refuse to execute and deliver to plaintiff such easement documents, and plaintiff is entitled to a decree of specific performance to compel defendant to execute the two easement documents filed April 15, 1974, in the record in this case or the easement documents identified as Plaintiff's Exhibits 8 and 9. Gilbert vs. Port, 28 Ohio St. 276; 49 O. Jur. 2d. 566-570, Secs. 54, 55. By reason of the foregoing determination, assignments of error Nos. 2, 3 and 4 are well taken. For the reasons hereinabove stated defendant-appellee's two assignments of error are not well taken.

Exhibit B

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The record reveals that the trial court found that the opposition to plaintiff's motion to compel discovery was substantially justified and to make an award of expenses would be unjust, and such determination was no abuse of discretion by the trial court in its refusal to impose sanctions upon defendant pursuant to Civ. R. 37 pertaining to the refusal of defendant Holly to answer questions upon the taking of his deposition. Accordingly, assignment of error No. 1 is not well taken. State Automobile Mutual Ins. Co. vs. Chrysler, 36 Ohio St. 2d 151.

Judgment of the Common Pleas Court of Ottawa County is reversed at costs of defendant-appellee, and coming now to enter the judgment which the trial court should have rendered, it is ordered, adjudged and decreed that defendant specifically perform the provisions of the two option agreements by executing the two easement documents on file in the record in this case containing the same legal description as the option agreements, or, in the alternative, that the defendant execute the two easement documents identified as Plaintiff's Exhibits 8 and 9, if the defendant prefers such alternatives, and that the $3,500.00 on deposit at the American Bank in the name of defendant is hereby decreed to be the sole property of defendant in payment of the above described easements. Judgment of the Common Pleas Court denying imposition of sanctions upon defendant under Civ.R. 37 is

affirmed. Cause remanded to said Court for execution of this judgment and for costs.

JUDGES' SIGNATURES

JUDGMENT ENTRY OF THE COURT OF APPEALS OF THE SIXTH APPELLATE DISTRICT OF OHIO

IN THE COURT OF APPEALS OF OTTAWA COUNTY, OHIO

Ohio Edison Company,

C.A. No. 463

Appellant

v.

Trial Ct. No. 18085

John Holly, Jr.,

Appellee

Decision and Journal Entry

Date: February 18, 1975

Motion of defendant-appellee to certify the record of this case to the Ohio Supreme Court for review and final determination for the reason that the judgment of this court rendered February 4, 1975, is in conflict with judgments on the same question by the Court of Appeals of the Fifth and Ninth Appellate Districts, is denied. The cases cited by defendant-appellee in the Motion To Certify, namely, Stanfield vs. Fisher, 37 Ohio App. 2d. 48; Steeg vs. Scharenberg, 20 Ohio App. 2d. 151, and Hotze vs. Erskine, 99 Ohio App 17, are not in conflict with the judgment of this court in this case rendered February 4, 1975.

EXHIBIT C

JUDGMENT ENTRY OF THE SUPREME COURT OF THE STATE OF OHIO

THE SUPREME COURT OF OHIO

1975 Term

Ohio Edison Co.,
Appellee,

to-wit:
April 17, 1975

v.

John Holly, Jr.,
Appellant

No. 75-192

Motion for an Order Directing the Court of Appeals for Ottawa County to Certify Its Record

It is ordered by the Court that this motion is overruled.

JUDGES' SIGNATURES

EXHIBIT D

JUDGMENT ENTRY OF THE SUPREME COURT OF OHIO

THE SUPREME COURT OF OHIO

1975 Term

Ohio Edison Co.,
Appellee,

to-wit:
April 17, 1975

v.

No. 75-192

John Holly, Jr.,
Appellant

Appeal from the Court of Appeals for Ottawa County, Ohio

This cause, here on appeal as of right from the Court of Appeals for Ottawa County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

JUDGES' SIGNATURES

Exhibit E

OHIO REVISED CODE SECTIONS

163.14 Jury; verdict

In appropriation proceedings the jury shall be sworn to impartially assess the compensation and damages, if any, without deductions for general benefits as to the property of the owner.

The jury, in its verdict, shall assess the compensation for the property appropriated and damages, if any, to the residue, to be paid to the owners. When a building or other structure is on the property appropriated or when a building or other structure is situated partly upon the land appropriated and partly upon adjoining land so that the structure can not be divided upon the line between such lands without manifest injury thereto, the jury, in assessing compensation to any owner of the land, shall assess the value thereof, as part of the compensation. The title to said structure shall vest in the agency which shall have the right to enter upon the adjoining land upon which any part of the structure is located for the purpose of removing said structure therefrom, after deposit in accordance with the verdict. Such removal shall be made within ninety days after taking title to the property appropriated; provided, that the court may extend removal time upon such conditions as the court requires.

The verdict shall be signed by at least three-fourths of the members of the jury.

If a jury is discharged without rendering a verdict, another shall be impaneled at the earliest convenient time and shall make the inquiry and assessment.

1723.01 Power to enter upon and appropriate land.

If a company is organized for the purpose of erecting or building dams across rivers or streams in this state to raise and maintain a head of water; for constructing and maintaining canals, locks, and raceways to regulate and carry such head of water to any plant or powerhouse where electricity is to be generated; for erecting and maintaining lines of poles on which to string wires or cables to carry and transmit electricity; for transporting natural or artificial gas, petroleum, coal or its derivatives, water, or electricity, through tubing, pipes, or conduits; or by means of wires, cables or conduits; for storing, transporting, or transmitting water, natural or artificial gas, petroleum, or coal or its derivatives, or for generating and transmitting electricity; then such company may enter upon any private land to examine or survey lines for its tubing, pipes, conduits, poles, and wires, or to examine and survey for a reservoir, dams, canals, raceways, a plant, or a powerhouse, and to ascertain the number of acres overflowed by reason of the construction of such dams, and may

appropriate so much of such land, or any right or interest therein, as is deemed necessary for the laying down or building of such tubing, conduits, pipes, dams, poles, wires, reservoir, plant, powerhouse, storage yards, wharves, bridges, workshops, receiving and delivery structures or facilities, pumping stations, and any other buildings, structures, appliances, or facilities necessary to the purposes of such companies, as well as the land overflowed, and for the erection of tanks and reservoirs for the storage of water for transportation and the erection of stations along such lines.

1723.02 Acquiring right to appropriate.

The appropriation referred to in section 1732.01 of the Revised Code shall be made in accordance with sections 163.01 to 163.22 of the Revised Code. So far as the rights of the public therein are concerned, the director of transportation or other state official having supervision or control as to state roads, the board of county commissioners as to county roads, the board of township trustees as to township roads, and the legislative authority of municipal corporation as to streets and alleys in their respective jurisdiction may grant to such companies, subject to such regulations and restrictions as such public officials prescribe, the right to lay such tubing, pipes, conduits, poles, and wires therein. But the right to appropriate for any

of the purposes specified in such section does not extend to the erection of any tank, station, reservoir, or building, or lands, therefor, or to more than one continuous pipe, conduit, or tubing, or lands therefor, in or through a municipal corporation, unless the legislative authority first consents thereto.

CONSTITUTION OF THE STATE OF OHIO

Article I, Section 19. Private property inviolate, exception.

Private property shall ever be held inviolate but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money: and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Article XIII, Section 5. Right of way.

No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money,

or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation: which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

CONSTITUTION OF THE UNITED STATES

Fifth Amendment

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Fourteenth Amendment

Section I.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge

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the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

OPTION

Parcel No. 5

For and in consideration of twenty and no/xx Dollar ($20.00) in hand paid, receipt of which is hereby acknowledged, the undersigned Grantor(s) hereby give and grant unto Ohio Edison Company, an Ohio corporation, the Grantee, the right and option to purchase at any time on or before the 31st day of March, 1973, an easement and right of way with certain rights and privileges for lines for the transmission and distribution of electric current, including telephone and telegraph, upon, over, under and across the following described premises, situated in the Township of Portage, County of Ottawa, State of Ohio, being a part of Section 5, Township 6 North, Range 17 East.

The approximate location of said right of way is as follows:

An irregular-shaped parcel of land bounded on the east by Grantors' easterly property line, bounded on the southeast by the northwesterly limits of an easement granted Ohio Edison Company by John Holly, Sr. on March 25, 1955 and recorded in Volume 178, Page 230 of the Ottawa County Deed Records, bounded on the south by Grantors' southerly property line, and bound ed on the northwest by the northwesterly line of right of way, which northwesterly line of right of way is described as follows:

The northwesterly line of said right of way

enters Grantors' premises from the land of Howard Dye at a point on said Grantors' easterly property line approximately 29 rods northerly from Grantors' southeast corner; thence from this point in a general south-westerly direction across Grantors' premises approximately 30 rods to a point on Grantors' southerly property line approximately 4 rods westerly from Grantors' southeast corner where said line crosses to the lands of John Holly, Jr.

The exact location of said right of way is to be designated by Grantee after its final surveys are made and in any event before the construction of said lines shall be commenced.

The undersigned Grantor(s) agree, if this option becomes effective by acceptance according to the terms hereof, to permit and convey to Grantee the right to erect, inspect, operate, replace, relocate, repair, patrol and permanently maintain upon, over, under and along the above described right of way across said premises, all necessary structures, wires, cables and other usual fixtures and appurtenances used for or in connection with the transmission and distribution of electric current, including telephone and telegraph, and the right of reasonable ingress and egress upon, over and across said premises for access to and from said right of way, and the right to trim, cut, remove or control by any other means at any and all times such trees,

limbs and underbrush within or adjacent to said right of way as may interfere with or endanger said structures, wires or appurtenances or their operation.

The undersigned Grantor(s) reserve the right to use the ground between said structures and beneath said wires, provided that such use does not interfere with or obstruct the rights herein granted, and the Grantor(s) agree that no building, obstruction or impediment of any kind shall be placed within said right of way or between said structures or beneath said wires without prior written approval of the Grantee.

The Grantee will repair or replace all fences, gates, lanes, driveways. drains and ditches damaged or destroyed by it on said premises or pay Grantor(s) for all damage to fences, gates, lanes, driveways, drains, ditches, crops and stock on said premises caused by the construction or maintenance of said lines.

All of the provisions contained in this option shall, on or before the date first herein before written and upon acceptance by Grantee, be incorporated into a final instrument of conveyance, with release of dower, provided Grantee pays or tenders to Grantor(s) or their heirs, executors, administrators or assigns, in full satisfaction of the rights optioned, the sum of Dollars ($400.00) which Grantor(s) agree to accept in such satisfaction and which

shall be paid or tendered before the construction of said lines shall be commenced. Such tender or payment may be made to Grantor(s) or to their heirs, executors, administrators or assigns, or such sum may be deposited by Grantee to their credit in The American Bank, Port Clinton, Ohio, which is hereby authorized to accept same and to acknowledge receipt thereof, and such tender, payment or deposit shall constitute a full compliance of Grantee's obligations hereunder, and Grantor(s) shall forthwith execute and deliver a final instrument of conveyance, with release of dower, to Grantee, its successors and assigns. Upon such tender, payment or depost being made, Grantee, its successors and assigns, shall have the immediate right to go upon siad premises for the purpose of constructing, maintaining and operating said lines.

The Grantor(s) represent that they are the owners of the premises herein described.

The easements, benefits and burdens hereby optioned shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF I, the Grantor(s) hereunto set my hand this 4th day of April, 1972.

/s/ D.R. Campbell /s/ John Holly, Jr.

OPTION

Parcel No. 6

For and in consideration of twenty---- no/---Dollar ($20.00) in hand paid, receipt of which is hereby acknowledged, the undersigned Grantor(s) hereby give and grant unto Ohio Edison Company, an Ohio corporation, the Grantee, the right and option to purchase at any time on or before the 31st day of March, 1973, an easement and right of way with certain rights and privileges for lines for the transmission and distribution of electric current, including telephone and telegraph, upon, over, under and across the following described premises, situated in the Township of Portage, County of Ottawa, State of Ohio, being a part of Sections 5 and 8, Township 6 North, Range 17 East.

The approximate location of said right of way is as follows:

CROSSING NO. 1

A strip of land abutting and parallel to an existing easement granted Ohio Edison Company by John Holly, Jr. on March 25, 1955 and recorded in Volume 178, Page 234 of the Ottawa County Deed Records, said strip of land being 35 feet wide, 25 feet on the northwesterly side and to the northwesterly limits of said existing easement on the southeasterly side of a survey line, which survey line of right of way is described as follows:

The survey line of said right of way enters Grantor's premises from the land of John Holly, Jr., et al, at a point on said Grantor's upper northerly property line approximately 34 rods easterly from Grantor's upper northwest corner; thence from this point in a general southwesterly direction across Grantor's premises approximately 33 rods to a point on the northwesterly limits of State Route 2 right of way; thence continuing in said southwesterly direction across said State Route 2 right of way approximately 29 rods to a point on the southeasterly limits of State Route 2 where said survey line re-enters Grantor's premises; thence continuing in said southwesterly direction across Grantor's premises approximately 39 rods to a point on Grantor's upper southerly property line, said line being the southerly line of Section 5, approximately 51 rods westerly from Grantor's upper southeast corner, said corner being the southeasterly corner of Section 5, where said line crosses to the lands of B. E. and B. A. Heilman.

(CONT'D)

The exact location of said right of way is to be designated by Grantee after its final surveys are made and in any event before the construction of said lines shall be commenced.

The undersigned Grantor(s) agree, if this option becomes effective by acceptance according to the terms hereof, to permit and convey to Grantee the right to erect, inspect, operate,

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replace, relocate, repair, patrol and permanently maintain upon, over, under and along the above described right of way across said premises, all necessary structures, wires, cables, and other usual fixtures and appurtenances used for or in connection with the transmission and distribution of electric current, including telephone and telegraph, and the right of reasonable ingress and egress upon, over and across said premises for access to and from said right of way, and the right to trim, cut remove or control by any other means at any and all times such trees, limbs and underbrush within or adjacent to said right of way as may interfere with or endanger said structures, wires or appurtenances or their operation.

The undersigned Grantor(s) reserve the right to use the ground between said structures and beneath said wires, provided that such use does not interfere with or obstruct the rights herein granted, and the Grantor(s) agree that no building, obstruction or impediment of any kind shall be placed within said right of way or between said structures or beneath said wires without prior written approval of the Grantee.

The Grantee will repair or replace all fences, gates, lanes, driveways, drains and ditches damaged or destroyed by it on said premises or pay Grantor(s) for all damage to fences, gates, lanes, driveways, drains, ditches, crops and stock on said premises

caused by the construction or maintenance of said lines.

All of the provisions contained in this option shall, on or before the date first herein before written adn upon acceptance by Grantee, be incorporated into a final instrument of conveyance, with release of dower, provided Grantee pays or tenders to Grantor(s) or their heirs, executors, administrators or assigns, in full satisfaction of the rights optioned, the sum of Dollars ($3100.00), which Grantor(s) agree to accept in such satisfaction and which shall be paid or tendered before the construction of said lines shall be commenced. Such tender or payment may be made to Grantor(s) or to their heirs, executors, administrators or assigns, or such sum may be deposited by Grantee to their credit in The American Bank, Port Clinton, Ohio, which is hereby authorized to accept same and to acknowledge receipt thereof, and such tender, payment or depost shall constitute a full compliance of Grantee's obligations hereunder, and Grantor(s) shall forthwith execute and deliver a final instrument of conveyance, with release of dower, to Grantee, its successors and assigns. Upon such tender, payment or deposit being made, Grantee, its successors and assigns, shall have the immediate right to go upon said premises for the purpose of constructing, maintaining and operating said lines.

The Grantor(s) represent that they are

owners of the premises herein desc

CROSSING NO. 2

A strip of land 50 feet wide, 25 feet on each side of a center line, which center line of right of way is described as follows:

The center line of said right of way enters Grantor's premises from the land of B. E. and B. A. Heilman at a point on said Grantor's lower easterly property line approximately 101 rods northerly from Grantor's lower southeast corner, said corner being in the center of Lockwood Road; thence from this point in a general southwesterly direction across Grantor's premises approximately 81 rods to an angle point where said survey line angles to the right approximately 23 degrees; thence from this point in a general westerly direction approximately 5 rods to a point on Grantor's lower westerly property line approximately 72 rods northerly from Grantor's southwest corenr, said corner being in the center of Lockwood Road, where said line crosses to the lands of H. and B. Johannsen.

Together with the right to install guy wires and anchors within or adjacent to the right of way herein granted wherever necessary.

The easements, benefits and burdens hereby optioned shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators,

successors and assigns.

IN WITNESS WHEREOF I, the Grantor(s) hereunto set my hand this 4th day of April, 1972.

/s/ D.R. Campbell /s/ John Holly, Jr.

EASEMENT

KNOW ALL MEN BY THESE PRESENTS

That I, JOHN HOLLY, JR., aka John Holly, an unmarried person, claiming title by virtue of insturments recorded in Volume 206, Page 353; Volume 203, Page 503; Volume 203, Page 505; Volume 119, Page 548; Volume 115, Page 262; Volume 166, Page 107; Volume 122, Page 666; and Volume 106, Page 349 of the Ottawa County Deed Record, the Grantor, for and in consideration of the sum of Three Thousand Five Hundred Dollars ($3,500.00) and other valuable considerations received to my full satisfaction of OHIO EDISON COMPANY, an Ohio corporation, the Grantee, do hereby grant unto Grantee, its successors and assigns, an easement and right-of-way, with the rights and privileges hereinafter set forth, for the lines for the transmission and distribution of electric current, including telephone and telegraph, upon, over, under and across the following described premises:

Situated in the Township of Portage, County of Ottawa, State of Ohio, being a part of Section 5, Township 6 North, Range 17 East.

PARCEL NO. 1

An irregular-shaped parcel of land bounded on the east by the Grantor's easterly property line, bounded on the southeast by the northwesterly limits of an easement granted Ohio Edison Company by John Holly, Sr.

on March 25, 1955 and recorded in Volume 178, Page 230 of the Ottawa County Deed Records, bounded on the south by Grantor's southerly property line, and bounded on the northwest by the northwesterly line of right of way, which northwesterly line of right of way is described as follows:

The northwesterly line of said right of way enters Grantor's premises from the land of H. Dye at a point on said Grantor's easterly property line approximately 493 feet northerly from Grantor's southeast corner; thence from this point in a general northwesterly direction across Grantor's premises approximately 496 feet to a point on Grantor's southerly property line approximately 41 feet westerly from Grantor's aforesaid southeast corner where said line crosses to the lands of J. Holly, Jr.

A strip of land abutting and parallel to an existing easement granted Ohio Edison Company by John Holly, Jr. on March 25, 1955 and recorded in Volume 178, Page 234 of the Ottawa County Deed Records, said strip of land being 35 feet wide,

25 feet on the northwesterly side and to the northwesterly limits of said existing easement on the southeasterly side of a survey line, which survey line of right of way is described as follows:

The survey line of said right of way enters Grantor's premises from the land of J. Holly, Jr. at a point on said Grantor's upper northerly property line approximately 576 feet easterly from Grantor's upper northwest corner; thence from this point in a general southwesterly direction across Grantor's premises approximately 542 feet to a point on the northwesterly limits of State Route 2 right of way; thence continuing in said southwesterly direction across said State Route 2 right of way approximately 492 feet to a point on the southeasterly limits of said State Route 2 where said survey line re-enters Grantor's premises; thence continuing in said southwesterly direction across Grantor's premises approximately 648 feet to a point on Grantor's upper southerly property line, said line being the southerly line of Section 5, approximately 860 feet westerly from Grantor's upper southeast corner,

said corner being the southeasterly corner of Section 5, where said line crosses to the lands of B.E. and B.A. Heilman.

CROSSING No. 2

A strip of land abutting and parallel to and existing easement granted Ohio Edison Company by an instrument recorded in Volume 3, Page 631 of the Ottawa County Records, said strip of land being approximately 35 feet wide, 25 feet on the northwesterly side and to the northwesterly limits of said existing easement on the southeasterly side of a survey line, which survey line of right of way is described as follows:

The survey line of said right of way re-enters Grantor's premises from the land of B.E. and B.A. Heilman at a point on said Grantor's lower easterly property line approximately 1,627 feet northerly from Grantor's lower southeast corner, said corner being in the center of Lockwood Road; thence from this point in a general southwesterly direction across Grantor's premises approximately 58 feet to an angle point where said survey line angles to the right approximately 7 degrees;

thence from this point in a general southwesterly direction approximately 1, 183 feet to an angle point where said survey line angles to the right approximately 21 degrees; thence from this point in a general westerly direction as a strip of land being 25 feet on the northerly side and to the northwesterly limits of Grantee's aforesaid existing easement on the southerly side of said survey line approximately 16? feet to a point on Grantor's lower westerly property line approximately 1, 178 feet northerly from Grantor's southwest corner, said corner being in the center of Lockwood Road, where said line crosses to the lands of H. and B. Johannsen.

Together with the right to install guy wires and anchors within or adjacent to the right of way herein granted wherever necessary.

The easement and rights herein granted shall include the right to erect, inspect, operate, replace, relocate, repair, patrol and permanently maintain upon, over, under and along the above described right of way across said premises all necessary structures, wires, cables and other usual fixtures and appurtenances used for or in connection with the transmission and distribution of electric

current, including telephone and telegraph, and the right of reasonable ingress and egress upon, over and across said premises for access to and from said right of way, and the right to trim, cut, remove or control by any other means at any and all times such trees, limbs, and underbrush within or adjacent to said right of way as may interfere with or endanger said structure, wires or appurtenances, or their operation.

The Grantor reserve the right to use the ground between said structures and beneath the said wires, provided that such use does not interfere with or obstruct the rights herein granted, and the Grantor agree that no building, obstruction or impediment of any kind shall be placed within said right of way or between said structures or beneath said wires without prior written approval of the Grantee.

The Grantee will repair or replace all fences, gates, lanes, driveways, drains and ditches damaged or destroyed by it on said premises or pay Grantor for all damage to fences, gates, lanes, driveways, drains, ditches, crops and stock on said premises caused by the construction or maintenance of said lines.

TO HAVE AND TO HOLD the said easement, rights and right of way and its appurtenances to said Grantee and to its successors and assigns forever; and the Grantor represents that they are the lawful

owners of said premises and have full power to convey the rights and easements herein granted, that the same are free and clear of all encumbrances and that they will warrant and defend the same against all lawful claims and demands whatsoever, except current taxes and assessments not yet due and payable, easements, restrictions and reservations of record, and zoning ordinances, if any, and for valuable consideration the Grantor does each hereby remise, release and forever quit-claim unto Grantee, its successors and assigns, all their right and expectancy of dower in the above described right of way.

IN WITNESS WHEREOF, I have hereunto set my had as of the ____ day of _____, 197____.

Signed in the presence of:

_____ _____

_____

Before me, A Notary Public in and for said County and State, personally appeared JOHN HOLLY, JR. an unmarried person aka JOHN HOLLY,
who acknowledged that he did sign the foregoing instrument and the same is his free act and deed.

Option Rods	=	Feet	Easement Feet	Difference Feet
29		478.5	493	14.5
30		495.0	496	1.0
4		66.0	41	25.0
		Parcel 2, Crossing #1		
34		561.0	576	15.0
33		544.5	542	2.5
29		478.5	492	13.5
39		643.5	648	5.5
51		841.5	860	18.5
		Parcel 2, Crossing #2		
		50	35	15.
101		1666.5	1627	39.5
81		1336.5	58	1278.5
5		82.5	169	88.5
72		1188.0	1178	2.0

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS OF OTTAWA COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
OF OTTAWA COUNTY, OHIO

Gladys Farmer, et al.,
Plaintiffs

Case No. 17402
Filed June 28, 1972

v.

The Toledo Edison Company,
Defendant

JUDGMENT

This matter came on to be heard on the pleadings, the evidence and arguments of counsel.

The Court, being fully advised of the premises, finds upon the issues set forth in the separate findings of fact and conclusions of law filed herein and finds that judgment should be entered in favor of Plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the easement instrument executed by Plaintiffs Gladys and Walter Farmer to Defendant The Toledo Edison Company, which instrument is recorded at Deed Book 238, page 630, of the Deed Records in the Recorder's office of Ottawa County, Ohio, is hereby set aside, cancelled and vacated and the Recorder of Ottawa County is instructed to cancel the same of record.

It is further ordered that Defendant, The Toledo Edison Company, either properly

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negotiate with the Plaintiffs or that this cause be set for trial.

Exceptions to Defendant. Costs to Defendant.

IN THE COURT OF COMMON PLEAS
OF OTTAWA COUNTY, OHIO

Gladys Farmer, et al.,
Plaintiffs

No. 17402

v.

The Toledo Edison Company,
Defendant

SEPARATE FINDINGS OF FACT AND CONCLUSIONS OF LAW
FILED June 28, 1972

This matter was duly assigned for trial and the Court having been requested to make a separate finding of facts and conclusions of law, finds the following facts:

That the plaintiffs gave to the defendant a deed for an easement across their property for the sum of $125.00.

The Court has received from the parties their proposed separate findings of fact and conclusions of law. After carefully reading and re-reading said findings the Court is unable to adopt either for the reason that the findings of facts in both of the suggested ones are not supported by evidence which the Court can

believe. However, the Court does find that an easement was given, as stated above, and that the plaintiffs received $125.00 therefor.

The Court further finds that an independent appraiser fixed the value of the easement and damage at many times higher than the $125.00, to-wit:

The Court further finds that the negotiator, so-called, was sent out with a sum certain to be paid, that the negotiator had no more knowledge of the property than any other person, that he had no appraisement given by the company and any statement made was without any foundation as to value and/or damage. The Court does find that he made a statement that suit would be brought unless the property was purchased.

The Court further finds that the plaintiffs herein gave some credence to what was said by the negotiator.

The Court further finds that the Toledo Edison had the power of condemnation and that the plaintiffs were bound to accept what a jury would find.

Conclusions of Law

It seems to this Court, while he can find no decisions to substantiate what he says, that a utility company should be compelled to have an appraisement made and a knowledge of the value and effect on the easement when they send people out to negotiate and that the Toledo Edison pay a price, at least a fair

price, for the reasons that they are not standing on an equal basis with the seller, and that they cannot deal on a willing buyer and seller basis because the landowner is not a willing seller.

Therefore the Court finds that the deed should be set aside and that either the Toledo Edison properly negotiate or the cause be set for trial.

Judgment entry to be prepared for attorney for the plaintiffs and filed with the Court.

Exceptions saved to the defendant.

Q. But did Mr. Campbell tell you that damages would be paid for destruction that took place to your crops and things during the time of construction?
A. He mentioned something like that. He says, "We'll -- when we damage anything, we'll pay for it."
Q. Is that what you had in mind as far as damages were concerned?
A. No, I had in mind I wanted damages before they come in there.
Q. What damages?
A. Because I can't go by that when they're already in there and they damage my crops, you can't get anything off of them.
Q. Well, what damages did you have in mind before they came in there?
A. Well, I can't sell the place over again; and I can't build under it. That's my damages. It's a valuable piece of land.
Q. You didn't consider the $3500.00 damages?
A. Now, that's the price of going through there.
Q. That's the price of the easement?
A. Yeah.

NEWSPAPER ARTICLES

The Toledo Blade, Toledo, Ohio, August 29, 1973:

4 NUCLEAR GENERATING UNITS PLANNED ALONG LAKE ERIE BY TOLEDO EDISON, 4 OTHER FIRMS
Program to Run For 10 years, Cost $3 Billion

Four new nuclear generating units will be built on or near Lake Erie in northwestern Ohio as part of a $3 billion, 10 year construction program announced late Tuesday by a five-company power pool in Ohio and Pennsylvania that includes Toledo Edison Company.....

The Plain Dealer, Cleveland, Ohio, Tuesday, September 4, 1973:
7 reactors planned amid utility-environmentalist dispute
NORTHERN OHIO BECOMING NUCLEAR POWER HOTBED
By William D. McCann

Northern Ohio is to become one of the major centers of nuclear electric power generation in the nation within a decade under current plans by several power companies...

News Herald, Port Clinton, Ohio -
Oak Harbor, Ohio, August 29, 1973

PLAN TWC NEW DAVIS-BESSE PLANTS

Plans for the construction of four more nuclear power plants and a coal-fired generating plant in northern Ohio and western Pennsylvan were disclsoed last night by CAPCO (Central Area Power Coordination) group, and two more plants at the Davis-Besse site are included....

PROPOSITIONS OF LAW

Proposition of Law No. 1:

Where a corporation having the power of eminent domain obtains the signature of a property owner to an option to grant a right of way for high voltage electric transmission line, if the option is enforceable, the constitutional and statutory safeguards regarding eminent domain apply.

Proposition of Law No. 2:

Where a corporation obtains the signature of a property owner to an agreement to grant a right of way for a high voltage electric transmission line, under Article XIII Section 5 of the Ohio Constitution, the Fifth Amendment and the due process clause of the Fourteenth Amendment to the United States Constitution, the only consideration which is adequate is full consideration and if the land value is stated to be $3500.00, a payment of $20.00 is insufficient consideration and the agreement is unenforceable.

Proposition of Law No. 3:

" Full" compensation as required by Article XIII, Section 5 of the Ohio Constitution and " just" compensation as required by the Fifth Amendment and the due process clause of the Fourteenth Amendment of the United States Constitution have as their constituent components (1) payment for the land taken and (2) payment for reduction in value of remaining land.

§163.14, Ohio Revised Code; Van Horn v. Iowa Public Service Company, 182 NW 2d 365 (1970); Georgia Power v. Sinclair, 176 SE 2d 639 (1970); Gulf States Utilities Company v. Robbin, 237 SO 2d 422 (1970); Central Louisiana Electric Company v. Fontenot, 159 SO 2d 738 (1964).

Proposition of Law No. 5:

Where a corporation obtains the signature of a property owner to an agreement for a high voltage electric transmission line, where there is no discussion and no release of the owner's right to damage to the remaining land, the utility company may not defeat the owner's right to damage to residue, and if the trial court orders the owner to specifically perform the option to convey a right of way, the owners are entitled to a jury trial to determine the damage, if any, to the remaining land, pursuant to the requirement of "full" compensation under Article XIII, Section 5, of the Ohio Constitution and the Fifth Amendment and the requirement of due process

under the Fourteenth Amendment of the Constitution of the United States.
49 O Jur 2d 617, In Re Appropriation, 25 O App 2d 169 (Court of Appeals, Meigs County 1970); Cannon v. Texas, 473 SW 2d 325 (Court of Civil Appeals Houston 1st District 1971).

Proposition of Law No. 6:

Where a corporation obtains the signature of a property owner to an agreement to grant a right of way for a high voltage electric transmission line, and the agreement form contains no discussion of and no release of the owner's right to damage to residue, said option violates the owner's constitutional right to damage to residue and cannot be enforced by specific performance.
City Stores v. Ammerman, 266 Fed. Supp. 266 (D. D. C), affirmed 394 Fed 2d 95 (CADC); Gould v. Gallam, 127 Cal App 2d 1, 273 P2d 93; Kamo Electric Co-op v. Cushard, 455 SW 2d 513 (Supreme Court, Missouri 1970); United Gas Pipeline v. Singleton, 241 Southern 2d 93 (Louisiana 3rd Circuit Court of Appeals 1970)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

NO. _____

John Holly, Jr.,
Petitioner
-v-
Ohio Edison Company,
Respondent

AFFIDAVIT -- PROOF OF SERVICE

State of Ohio)
Ottawa County) ss

Thomas L. Corogin, being first duly sworn according to law, deposes and says that he is the Counsel for Petitioner in the above captioned matter, and that on the 12 day of July, 1975, he mailed by first class mail, postage prepaid, to Mr. Paul C. Moon, Counsel for Respondent herein, 222 E. Second St., Port Clinton, Ohio 43452, a copy of the Petition for a Writ of Certiorari to the Supreme Court of Ohio. 3 copies mailed.

Thomas L. Corogin

Sworn to before me and subscribed in my presence this 12 th day of July, 1975.

Notary Public -Ohio
Stephen E. Cottrell